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**(2006) 04 JH CK 0017**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 494 of 2004

Sant Kumar Sahu and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision:** April 5, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 239, 482
- Penal Code, 1860 (IPC) - Section 120B, 34, 409, 420, 467

**Citation:** (2006) 3 JCR 274

**Hon'ble Judges:** D.K. Sinha, J

**Bench:** Single Bench

**Advocate:** Nilesh Kumar Agrawal, for the Appellant; APP, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

All the four petitioner have preferred this petition u/s 482 of the Code of Criminal Procedure for setting aside the entire criminal proceedings including the order impugned dated 29.8.2003, passed in Cr. Rev. No. 9 of 2001 arising out of Dumri P.S. Case No. 51 of 1997, corresponding to G.R. Case No. 2 of 1998 as also setting aside the order impugned passed by the Judicial Magistrate, 1st class, Gumla on 25.1.2001 whereby the prayer of the petitioners was rejected.

2. It was alleged in the written complaint of the informant presented before the Officer-in-Charge of Dumri P.S that several accused persons including the petitioners had not executed their work of construction done of various Check Dams properly which were authorized to them and, accordingly, they defalcated the Government exchequer. On the basis of written report Dumri P.S. Case No. 51 of 1997 was instituted under Sections 420, 467, 468, 471, 409, 120B/34 of the Indian

Penal Code as against the eight named accused persons including the four petitioners.

3. Learned Counsel for the petitioners submitted that departmental proceedings as well as criminal prosecution were initiated against the petitioners with the common witnesses. The petitioners were put under suspension contemplating departmental proceeding, but no charge could be proved in the departmental enquiry. Recommendations were made by the Enquiry Officer concerned to exonerate the petitioners as contained in Annexure 2 series. The Enquiry Officer envisaged that it were not the petitioners rather the Senior Officers who were responsible for the alleged defalcation. Meanwhile, police after Investigation submitted charge-sheet for the alleged offence and, accordingly, cognizance of the offence was taken by the Court below. The petition of the petitioners u/s 239 of the Code of Criminal Procedure was rejected by the Court below on 25.1.2001 and on being aggrieved when they preferred Cr. Rev. No. 9 of 2001, it was also rejected by the Sessions Judge, Gumia by the order impugned. The allegations of the misconduct could not be established in the different departmental proceedings of the petitioners and, therefore, they were exonerated from the charges.

4. Learned Counsel for the petitioners submitted that since the petitioners have been exonerated from the charges in the departmental proceeding, continuation of criminal prosecution against them would be the abuse of the process of Court and as such, the prosecution is liable to be quashed. The allegations against the petitioners were discussed in course of departmental enquiry and only the senior officials were held responsible for the alleged misappropriation of public money, but unfortunately the cognizance of the offence has been taken also against the petitioners. Reliance has been placed on a decision reported in [P.S. Rajya Vs. State of Bihar](#), . . The Apex Court in P.S. Rajya v. State of Bihar propounded that "the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the instant case the charge in the departmental proceedings and in the criminal proceedings is one and the same. If the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings."

5. From perusal of the Annexure 2 series which are enquiry reports submitted by the enquiry officer with regard to the departmental proceedings initiated against the petitioners, this Court finds that liabilities have been fixed upon the senior officers for making entry in the measurement book and consequently withdrawal of the amount which were allotted for the construction of work in different projects. No doubt, it was reported that the petitioners being the Jansewak had to ensure the proper utilization of the allotment. However, it was observed by the enquiry officer that selection of site and preparation of estimate to obtain technical sanction were

the duties of the Engineer and Technical Officers. The valuation of the work done was assessed by the Assistant Engineer as well as Executive Engineer and it could not be expected from non-technical like Jansewak employee to object upon the technical report of the Engineers and that they may report against them if at all there were irregularities in their assessment and, therefore, it was held that the petitioners were in nowhere responsible for the alleged embezzlement of the public fund. The observation made by the Enquiry Officer-cum-Sub-divisional Officer, Gumla in favour of the petitioners based upon discussion of evidence and there appears merit in the present petition u/s 482 of the Code of Criminal Procedure.

6. In the result, this petition is allowed and criminal prosecution against the petitioners in Dumri PS. Case No. 51 of 1997, corresponding to G.R. Case No. 2 of 1998, pending in the Court of Judicial Magistrate, 1st Class Gumla is quashed with consequential effect.